

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of )

)  
Amendment of Section 73.202(b), )

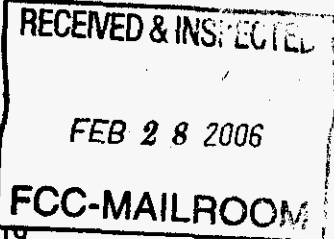
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Table of Allotments, )

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FM Broadcast Stations. )

)  
(Evergreen, Alabama, and Shalimar, Florida) )

MB Docket No. 04-219

RM-10986



**MEMORANDUM OPINION AND ORDER**

**Adopted: February 22, 2006**

**Released: February 24, 2006**

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Reconsideration filed by Quantum of Fort Walton Beach License Company, LLC ("Quantum") directed to the *Report and Order* in this proceeding.<sup>1</sup> Star Broadcasting, Inc., successor in interest to Gulf Coast Broadcasting Company, Inc., filed an Opposition to Petition for Reconsideration and Quantum filed a Reply to Opposition. For the reasons discussed below, we deny the Petition for Reconsideration.

**Background**

2. At the request of Gulf Coast Broadcasting Company, Inc., former licensee of Station WPGG, Channel 227C1, Evergreen, Alabama, the *Report and Order* substituted Channel 227C2 for Channel 227C1 at Evergreen, reallocated Channel 227C2 to Shalimar, Florida, and modified of the Station WPGG license to specify operation on Channel 227C2 at Shalimar. The *Report and Order* was pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.<sup>2</sup> *Community of License* requires that any reallocation proposal result in a preferential arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>3</sup> In this situation, the reallocation resulted in Shalimar (with a population of 718 persons according to the 2000 U.S. Census) having its first local service while Evergreen (with a population of 3,630 persons according to the 2000 U.S. Census) will continue to receive local service from AM Station WIJK. The *Report and Order* also recognized that Shalimar is located within the Fort Walton Urbanized Area. Consistent with the guidelines set forth in *Faye and*

<sup>1</sup> *Evergreen, Alabama, and Shalimar, Florida*, 20 FCC Rcd 6300 (MB 2005).

<sup>2</sup> See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License"), 4 FCC Rcd 4870 (1989), *recon. granted in part* 5 FCC Rcd 7094 (1990).

<sup>3</sup> 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

*Richard Tuck*, the *Report and Order* determined that Shalimar is independent of the Fort Walton Urbanized Area and entitled to consideration as a first local service.<sup>4</sup>

3. In its Petition for Reconsideration, Quantum argues that Shalimar is dependent upon the Fort Walton Urbanized Area and not entitled to consideration as a first local service. In addition, Quantum states that this reallocation resulted in a withdrawal of service to 97,195 persons with 9,062 persons receiving less than five aural services. Finally, Quantum contends that the reallocation of Station WPGG to Shalimar would result in Cumulus Media, Inc. and Star Broadcasting having a "monopolistic market share in Fort Walton Beach and be in conflict with the multiple ownership rules.

4. We deny the Petition for Reconsideration. It continues to be our view that this reallocation will result in a preferential arrangement of allotments as required by the Commission in *Modification of FM and TV Authorizations to Specify a New Community of License* ("Community of License").<sup>5</sup> In reaching this determination, we compared the existing versus the proposed arrangement of allotments using the FM allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*.<sup>6</sup> We reject the Quantum argument that the loss of service in this instance precludes a favorable finding on this reallocation proposal. We have conducted an engineering review of this proposal using the block centroid data available from the 2000 U.S. Census. Based on this data, we have determined that the Shalimar allotment will result in a loss of service to 164,459 persons<sup>7</sup> and provide new service to 227,324 persons. This results in a net gain in service to 62,864 persons. Except for 105 persons receiving only four aural services, based upon our own calculation, all other listeners losing service will continue to be served by more than five aural services.<sup>8</sup> We have also reviewed the Quantum engineering exhibit regarding the discrepancy between our determination of 105 persons receiving less than five services and the Quantum assertion that 9,062 persons would receive less than five services. While our calculation is based on 2000 U.S. centroid data, Quantum has not provided supporting information regarding its populations that would be within the respective service contours. We also note that in its engineering exhibit, Quantum references "additional stations" which serve portions of the existing Station WPGG service area. In order to "minimize clutter," Quantum did not identify these stations or the areas they serve. As such, we cannot fully assess the accuracy of the Quantum engineering exhibit.

<sup>4</sup> *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>5</sup> *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), recon. 5 FCC Rcd 7094 (1990).

<sup>6</sup> *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1988). The FM allotment priorities are: (1) First fulltime aural service; (2) Second fulltime aural service; (3) First local service; and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3).

<sup>7</sup> In its engineering exhibit, Quantum states that 97,195 persons would lose service instead of the 164,459 persons noted above. Quantum derives this population total on the basis of the licensed Station WPGG facilities. In determining the overall net population gain, we assume maximum facilities for both the existing allotment at Evergreen and the proposed allotment at Shalimar. See *Greenup, Kentucky, Athens, Ohio*, 2 FCC Rcd 4319 (MMB 1987), recon. 4 FCC Rcd 3843 (MMB 1989), *aff'd in relevant part* 6 FCC Rcd 1493 (1991), *aff'd in relevant part* 6 FCC Rcd 1841 (1991), *appeal dismissed sub nom. WATH, Inc. v. FCC*, D.C. Cir. No. 91-1268 (Sept. 26, 1991).

<sup>8</sup> The Commission has considered five or more reception services to be "abundant." *Family Broadcasting Group*, 53 RR 2d 662 (Rev. Bd. 1983), *rev. denied* FCC 83-559 (Comm'n Nov. 29, 1983); see also *LaGrange and Rollingwood, Texas*, 10 FCC Rcd 3337 (1995).

5. This reallocation will provide a first local service to Shalimar while Evergreen will continue to receive local service from AM Station WJJK. We recognize that Shalimar is located in the Fort Walton Beach Urbanized Area. In this regard, we are concerned with the potential migration of stations from lesser-served rural areas to well-served urban areas. For this reason, we will not blindly apply a first local service preference when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. In making such a determination, we apply existing precedents.<sup>9</sup> In essence, we consider the extent the station will provide service to the entire Urbanized Area, the relative populations of the suburban and central city, and, most important of all, the independence of the suburban community.

6. The first area of inquiry concerns the extent a station will provide service to an entire Urbanized Area. As a Class C2 facility, Station WPGG will invariably serve a large area and a significant portion of the Fort Walton Beach Urbanized Area. Because Station WPGG is a Class C2 facility, this coverage does not support a conclusion that Shalimar is not entitled to consideration as a first local service. Our second area of inquiry involves the relative populations of Shalimar and Fort Walton. The 2000 Shalimar population of 718 persons is less than four percent of the 19,973 person population of Fort Walton Beach. However, a percentage of less than one percent has not precluded favorable consideration as a first local service.<sup>10</sup> Our third, and most important, inquiry is the independence of the suburban community. In *Faye and Richard Tuck*, the Commission set forth eight factors in assessing the independence of a suburban community.<sup>11</sup> Contrary to the Quantum argument that we have turned the *Tuck* analysis into a "sham," these are objective criteria which enable us to determine the independence of a suburban community. We will again evaluate the Shalimar reallocation proposal using each of these factors. As discussed below, it continues to be our view that a majority of the factors support a determination that Shalimar is independent of the Fort Walton Beach Urbanized Area and entitled to consideration as a first local service.

8. The first factor is the work patterns of the Shalimar residents. The purpose of this factor is to assure that the residents of the suburban community are not reliant upon the Urbanized Area for employment. In this regard, Quantum notes that the Shalimar workforce consists of 363 people and that Shalimar is a "net importer of workers" due to the fact that a majority of the Shalimar residents are retired. While there is no data on the percentage of Shalimar residents who work in Shalimar, we do note

<sup>9</sup> See e.g. *Huntington Broadcasting Co. v. FCC*, 192 F. 2d 33 (D.C. Cir. 1951); *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

<sup>10</sup> See *Ada, Newcastle and Watonga, Oklahoma*, 11 FCC Rcd 16896 (MMB 1996).

<sup>11</sup> The Commission set forth the following eight factors: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries. We have considered a community as independent when a majority of these factors demonstrate that the community is distinct from the urbanized area. *Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (MMB 1996); *Jupiter and Hobe Sound, Florida*, 12 FCC Rcd 3570 (MMB 1997).

that data from the 200 U. S. Census indicates that the mean commuting time for Shalimar workers is 16.3 minutes. From this, we conclude that a significant number of Shalimar residents work in or very near Shalimar and that there are significant employment opportunities for these residents who would wish to work in Shalimar. For these reasons, we find that the residents of Shalimar do not rely on the Fort Walton Beach Urbanized Area for employment. This is sufficient to support a favorable finding on this factor.<sup>12</sup> In regard to the second factor, whether the smaller community has its own local newspaper or other media providing news and advertising for Shalimar, we cannot make a favorable finding.

9. The third factor, perception of community leaders and residents, and the fourth factor, local government and elected officials, clearly support a determination concerning the independence of Shalimar. Gulf Coast submitted a letter from the Shalimar Town Manager referring to the "strong sense of community." Shalimar, incorporated in 1944, is governed by a mayor and four commissioners. Shalimar also has a Special Projects Commissioner, a Finance and Administration Commissioner, a Town Attorney, a Town Manager, a Deputy Town Clerk, a Police Chief and a Maintenance Supervisor. We also make a favorable finding under the fifth factor because Shalimar has its own post office and zip code (32579).

10. We affirm the favorable finding under the sixth factor regarding commercial establishments, health facilities and transportation system. Gulf Coast has identified numerous local businesses, medical offices and a local bus service. We are unable to make a favorable finding on the seventh factor because it appears that Fort Walton Beach and Shalimar are part of the same advertising market. Finally, we are unable to make a favorable finding regarding the eighth factor, the extent to which Shalimar relies on the larger metropolitan area for municipal services. While Shalimar does have a Police Chief, two town parks and the Shalimar library located outside the town boundaries, a majority of municipal services are not provided by the town of Shalimar.

11. In its Petition for Reconsideration, Qantum states that because Cumulus Broadcasting LLC ("Cumulus") loaned Star Broadcasting, Inc. \$1,500,000 to acquire Station WPGG, Cumulus now has an attributable interest in five stations in the Fort Walton Beach radio market.<sup>13</sup> As such, this reallocation will result in Cumulus having a "monopolistic control" of the Fort Walton Beach radio market and be in violation of the Commission's multiple ownership rules.<sup>14</sup> Qantum has prematurely raised concentration of control and multiple ownership issues. These issues are not considered in conjunction with an allotment rulemaking proceeding.<sup>15</sup> Rather, a Qantum may reassert these arguments against the Star

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<sup>12</sup> See *Anniston and Ashland, Alabama, and College Park, Covington, Milledgeville and Social Circle, Georgia*, 16 FCC Rcd 3411 (MMB 2001) (16% of workforce employed in community sufficient to support a favorable finding on this factor).

<sup>13</sup> See 47 C.F.R. § 73.3555, Note 2(i).

<sup>14</sup> See 47 C.F.R. § 73.3555(a)(1)(iii).

<sup>15</sup> See *Chillicothe and Ashville, Ohio*, 17 FCC Rcd 22410, 22414 (MB 2002), *recon. denied*, 18 FCC Rcd 22410 (MB 2003), *app. for rev. pending*; see also *Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, 16 FCC Rcd 22581 (MMB 2001); and *Letter from Peter H. Doyle, Acting Chief, Audio Services Division, to Paul A. Cuelski, Esq. et al., File No. BAPH-2001101ABD (may 24, 2001)*.

Broadcasting, Inc. application to implement the reallocation.<sup>16</sup> As we have previously stated, this policy is intended "...to achieve an efficient and orderly transaction of both the rulemaking and the application process" and recognizes that "a rulemaking proceeding involves a technical and demographic analysis of competing proposals in the context of Section 307(b) of the Act."<sup>17</sup> Further, the Commission's *Ownership Report and Order*<sup>18</sup> did not direct the staff to change this policy.

12. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Qantum of Fort Walton Beach License Company, LLC IS DENIED.

13. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

14. For further information concerning this proceeding, contact Robert Hayne, Media Bureau, (202) 418-2177.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief,  
Audio Division  
Media Bureau

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<sup>16</sup> In this regard, Qantum has filed an Informal Objection against the minor change application to implement this reallocation (BPH-20050513ACW) as well as a Petition to Deny directed against the application to assign the Station WPGG license to Cumulus Licensing (BALH-20050503AAW).

<sup>17</sup> *Detroit Lakes and Barnesville, Minnesota, and Enderlin, North Dakota*, *supra* note 33, 17 FCC Rcd at 25059-60.

<sup>18</sup> *Biennial Regulatory Review*, 18 FCC Rcd 13620 (2003), *aff'd in part and remanded in part*, *Prometheus Radio Project, et al. v. FCC*, 373 F. 3d 372 (3<sup>rd</sup> Cir. 2004), *stay modified on rehearing*, No. 03-3388 (3<sup>rd</sup> Cir. Sept. 3, 2004).